



## **CITY OF FORT BRAGG**

*Incorporated August 5, 1889*  
416 N. Franklin St.  
Fort Bragg, CA 95437  
Phone: (707) 961-2823  
Fax: (707) 961-2802  
[ci.fort-bragg.ca.us](http://ci.fort-bragg.ca.us)

### **TESTIMONY PRESENTED BY**

**JERE MELO**  
**MAYOR**  
**CITY OF FORT BRAGG, CALIFORNIA**

**Submitted to the**

**SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT**  
**COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE**  
**U.S. HOUSE OF REPRESENTATIVES**

**WASHINGTON, DC**

**September 30, 2004**

**Mr. Chairman and Members of the Subcommittee:**

Thank you and your staff for the invitation to present testimony to the Subcommittee today.

My name is Jere Melo, and I am the Mayor, City of Fort Bragg, California. The City is located about 150 miles north of San Francisco, right on the Pacific Ocean. Fort Bragg is a city of about 7,000 residents, and it serves a population of 18,000 to 20,000 persons who live and work along about 65 miles of the California coast.

I refer you to the details in the “City of Fort Bragg Case Study”, which is attached hereto. My presentation will be as a small town mayor, not as an NPDES permit or Clean Water Act legal expert.

**“Are Citizen Suit Provisions of the Clean Water Act Being Misused?”**

To get right to the point of this hearing, I believe the citizen suit provisions of the Clean Water Act are being misused. The City of Fort Bragg has been damaged by the provisions for citizen suits. We were faced with the uncertainty and expense of a threatened citizen lawsuit against the discharges from our waste water treatment plant. We believe we were in compliance with our NPDES permit for nearly all of the alleged violations listed in the citizen complaint, but the time and cost to defend the charges was beyond the diminished return. And so, we came to a settlement with the citizen group in order to cut our losses.

I believe it is important to state that in our case, the citizen group was not made up of local, concerned citizens. The group was from a city about 100 miles from Fort Bragg and located in a different county.

**Citizen Suits Have Been Used Against Many Cities, Sanitation Districts and Businesses in the Redwood Empire and Across California.**

Fort Bragg’s experience is not unique. Nearly all of the cities in our part of California have encountered citizen suits. One particular, larger city, Santa Rosa, has been challenged several times, all with the same result. Each city, or sanitation district, settled before the matter went to court. The potential cost of defending the suit and the uncertainty of prevailing on all points raised makes a settlement the most cost- effective solution.

Businesses are also not exempt from citizen suits. There are some manufacturing operations that have an NPDES permit and a waste water treatment process. The same group that challenges publicly-owned treatment plants is the group that threatens suit against business. To some degree, the citizen suit can be a job-killer, in that the cost to settle makes the cost of production rise, and plants become marginal with increases in costs.

I am very active in environmental policy matters through the League of California Cities. I tell you that the experience I relate to you about Fort Bragg and its neighboring cities is becoming more frequent throughout California. As more plaintiff's attorneys see the possibility of easy money in settlements, there are more threats of citizen suits. It is a matter that deserves at least the attention this subcommittee is giving.

### **Citizen Suits Come From Small Groups**

Earlier I indicated that the group that threatened our city with a citizen suit is located about 100 miles away. It is also a very small group. The membership of this group, Northern California **Riverwatch**, seems to consist of less than 10 persons. **Riverwatch** has threatened and collected settlements from all of the cities in our area. In one case of the larger city being challenged multiple times, **Riverwatch** changed its name, but the persons involved were the same. And so, the citizen suit provisions of the Clean Water Act have been co-opted as a new business of threatened litigation and a real goal of extracting money from entities that treat waste water.

### **Riverwatch Does Not Promote Water Quality Improvements**

Once a settlement is complete, there is little interest from our so-called citizen group. The "book" on a **Riverwatch** threat is to suggest a settlement as soon as possible. While the first reaction to a settlement is a rejection, no one has waited long for the settlement negotiations to begin. And they always begin with discussion about their cost to prepare the threat, some costs for their board members to review your plant and process and some other funding for public groups or pet projects.

In Fort Bragg's case, we paid \$12,000 to a **Riverwatch** selected consultant to review our plant. In an unmitigated promotion of his private business, his recommendation was to purchase his brand of water treatment chemicals, the "White Knight" brand, as I recall. Now this consultant is a **Riverwatch** board member.

Another provision was to set aside \$35,000 in an educational fund, which we did. A group known locally as "Noyo Watershed Alliance" (the Noyo River is the primary water source for Fort Bragg) was given control of the funds for education or land use improvement. The group has unanimously agreed to work to relocate a county road in three locations where very substantial amounts of sediment are now placed in the river. **Riverwatch** is objecting to the use of funds for this work. My best guess is that **Riverwatch** wants the \$35,000 to end up in someone's pocket of its choosing, rather than eliminating three substantial sources of sediment to a stream providing habitat for coho salmon and steelhead trout.

Page 3

Testimony of Jere Melo, Mayor  
City of Fort Bragg, CA

### **RECOMMENDATION**

The citizen suit provisions of the Clean Water Act need amendment to prevent misuse. The current system, as applied in the Redwood Empire of California, essentially allows allegations of water quality violations to lead to cash settlements, even where the public agency is already subject to a compliance order and has made commitments toward better operation and maintenance or constructing new facilities or processes.. There is no consideration for a record of otherwise good performance, no consideration for a record of investment for improvements, and no consideration for working with regulatory agencies to achieve consistent compliance and to make continued improvements. Some additional burden of reason and proof needs to be placed on those who threaten a federal suit, prior to filing the 60-day notice, and such suits should be forbidden where a city or other permittee is already under a compliance order, notwithstanding that penalties were not paid. We look forward to any help you can provide to us in this regard.

Thank you,

Jere Melo  
Mayor of Fort Bragg (CA)

### City of Fort Bragg Case Study:

The City operates a small trickling filter sewage treatment plant rated for 1 million gallons per day in dry weather, but can reach as high as 5-7 million gallons per day in wet weather due to large rain events.

*State Action:* On January 23, 1997, the Regional Water Quality Control Board issued Cease and Desist Order No. 97-2, which required repairs to the City's collapsed bio-filtration process. The secondary biofilter was repaired in September, 1997.

On December 10, 1998, another Cease and Desist Order ("CDO") No. 98-126 required the preparation of a plan to meet the City's effluent limitations, which were not based on the type of treatment plant operated by the City. The City submitted the plan in February, 1999 and included a time schedule for proposed improvements.

On March 22, 2001, the City's permit was scheduled to be renewed by the Regional Water Quality Control Board, including proposed changes to reflect limits for "treatment equivalent to secondary treatment" applicable to the City's trickling filter plant. However, following comment by RiverWatch, the Board took no action on the permit, but rescinded CDO No. 98-126 and adopted CDO No. R1-2001-23, which modified the time schedule for improvements. Because the permit was never changed, the City remained subject to permit limits not appropriate for the type of treatment plant it operated and made the City vulnerable to citizen suits for permit violations.

*The Citizen Suit:* In February of 2001, after the Regional Water Board had already issued enforcement orders, RiverWatch sent a 60-day notice letter alleging continuing violations of effluent limits, failure to comply with NPDES permits and reporting requirements, and discharge of raw sewage and pollutants into the Pacific Ocean. The case, which was settled prior to litigation, resulted in a Consent Decree issued July 9, 2002.

*Case Results:* As a result of the citizen suit filed by River Watch, the City of Fort Bragg:

- As part of the RiverWatch requirements during the settlement process, the City had to retain Bob Rawson, selected by Jack Silver, to conduct an audit/ evaluation of Fort Bragg's collection system and treatment facility at a cost of \$12,000. Bob Rawson proceeded to review and make recommendations for treatment plant improvements. One of his recommendations was that the City use a biological product that Rawson just happened to sell. Mr. Rawson is a current member of the RiverWatch Board.
- Paid \$25,000 in attorneys fees and costs to Jack Silver plus an equivalent amount in fees to the City's own attorneys.
- Set up a Public Education fund in the amount of \$35,000, currently being overseen by the Noyo Watershed Alliance, and now being disputed by Jack Silver.

- The City developed and implemented a grease trap ordinance and inspection program to reduce the risk of improper disposal of grease by restaurants in the City.
- Hired Nute Engineering to complete a pre-chlorination study of the wastewater treatment facility for a cost of \$5,000.
- Began the process of addressing inflow and infiltration (I/I) issues. The City has authorized expenditures of \$50,000, which was necessary to secure grant funding totaling nearly \$720,000 to perform the work. Complete by May 30, 2007, all sewer line repairs identified in a report prepared by the City in 2000.
- Nute Engineering nearly completed the design of the Sand Filter Project as required by the Cease and Desist Order at a cost of approximately \$35,000. This project is no longer necessary because of the City's implementation of a permanent chemical feed process that has brought the City into compliance.

The full cost of the suit was in the range of \$150,000 to upwards of \$200,000 and required the City to do things already obligated to do under the Cease and Desist Order or to do things not required or not related to compliance with the City's permit requirements.